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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(HONORABLE LARRY A. BURNS)

UNITED STATES OF AMERICA,) Case No. 12CR4235-LAB

Plants 2013, 4, 22; doi:10.3390/plants4010022

12 v.) Time: 9:30 a.m.

Defendant.

TO: LAURA E. DUFFY, UNITED STATES ATTORNEY, and
JERRY A. BEHNKE, ASSISTANT UNITED STATES ATTORNEY
P. VAN CAMPEN, UNITED STATES PROBATION OFFICER

The defendant, Carlos Dominguez-Maroyoqui, by and through his appointed counsel, Gary P. Burcham, hereby files the following objections to the pre-sentence report.

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1 **OBJECTIONS**

2 1. Mr. Dominguez-Maroyoqui objects to the recommendation of U.S.
 3 Probation that he receive a 12-level enhancement for his prior 18 U.S.C.
 4 § 111 conviction. [PSR 4]. Although Mr. Dominguez-Maroyoqui indeed
 5 suffered this section 111 conviction in case number 96CR0539-BTM, the
 6 judicially-noticeable documents which show only a plea to a generic
 7 section 111 offense fail to establish that this conviction is either a
 8 categorical crime of violence, or a crime of violence under the modified
 9 categorical approach. See United States v. Juvenile Female, 566 F.3d 943,
 10 948 (9th Cir. 2009) (Ninth Circuit holding only that a violation of §
 11 111(b) is a categorical crime of violence).¹ For this reason, the
 12 appropriate offense level increase for this conviction is 4 levels, not
 13 the 12 levels recommended in the PSR.

14 2. Mr. Dominguez-Maroyoqui objects to the facts contained in the
 15 PSR that relate to the 1996 assault conviction. [PSR 6]. Mr. Dominguez-
 16 Maroyoqui claims that these facts are not accurate, and submits that the
 17 only facts that this Court should consider in determining whether this
 18 conviction qualifies as a crime of violence are those that were admitted
 19 by Mr. Dominguez-Maroyoqui as part of his disposition in this case. See
 20 United States v. Gonzalez-Aparicio, 663 F.3d 419, 432 (9th Cir. 2012) (a
 21 sentencing court "may not turn to the PSR for a narrative description of

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 23 ¹ "Crime of violence" under section 2L1.2 means any of the
 24 following offenses under federal, state, or local law: murder,
 25 manslaughter, kidnapping, aggravated assault, forcible sex offenses
 26 (including where consent to the conduct is not given or is not
 27 legally valid, such as where consent to the conduct is involuntary,
 28 incompetent, or coerced), statutory rape, sexual abuse of a minor,
 robbery, arson, extortion, extortionate extension of credit,
 burglary of a dwelling, or any other offense under federal, state,
 or local law that has as an element the use, attempted use, or
 threatened use of physical force against the person of another.

1 the underlying facts of the prior conviction.")

2 Respectfully submitted,

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4 Dated: January 14, 2013

/s/ Gary P. Burcham
5 GARY P. BURCHAM
6 Attorney for Defendant

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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) U.S.D.C. No. 12CR4235-LAB
Plaintiff-Appellee,) CERTIFICATE OF SERVICE
v.)
CARLOS DOMINGUEZ-MAROYOQUI,)
Defendant-Appellant.)

IT IS HEREBY CERTIFIED THAT:

I, GARY P. BURCHAM, am a citizen of the United States and am at least eighteen years of age. My business address is 964 Fifth Avenue, Suite 300, San Diego, CA 92101.

I am not a party to the above-entitled action. I have caused service of Defendant's Objections to the Pre-sentence Report on the following party or parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies him/her.

Jerry Behnke, Esq.

19 I declare under penalty of perjury that the foregoing is true and
20 correct.

21 Executed on January 14, 2013.

/s/ Gary P. Burcham
GARY P. BURCHAM